

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

Nadine Gazzola, individually, and as co-owner,
President, and as BATFE Federal Firearms Licensee
Responsible Person for **Zero Tolerance
Manufacturing, Inc.**; *et al.*

Civ. No.: 1:22-cv-1134 (BKS/DJS)

Plaintiffs

v.

KATHLEEN HOCHUL, in her Official Capacity
as Governor of the State of New York; *et al.*

Defendants

DECLARATION OF PLAINTIFF

Seth Gazzola – Zero Tolerance Manufacturing, Inc.

I am Seth Gazzola and I make this Declaration under penalties of perjury. These statements are true to the best of my knowledge, and are based upon my personal knowledge and experience unless otherwise specified.

1. I oppose all laws complained of in this case. I submit this “Declaration” to highlight certain of my background, credentials, employment, licenses, and relevant experience.

I reserve the right to submit such further declarations, testimony, and exhibits as may be necessary to support our claims.

2. I read through the “Declaration” of my wife, Nadine Gazzola, and I concur with her submission. This supplements her analysis.
3. Footnotes within this document that provide citation of law are inserted by Counsel.
I attest that I am generally, as a layman, familiar with the laws stated, discussed, and argued herein. Legal citations in footnotes are provided by Counsel to the Plaintiffs as a courtesy to the Court due to the complexity of this case.
4. I am not a “disqualified person,” as this term is defined under 18 U.S.C. §922(g).
5. I have reviewed the “Declaration” of my wife, Nadine Gazzola, prior to completing this one. My “Declaration” is written to further that conversation.
6. **Business & Personal Background.** Together with my wife, Nadine Gazzola, we are co-owners of the business “Zero Tolerance Manufacturing, Inc.” I am the Vice President of this corporation. It is located in Ghent, Columbia County, New York. Our business was incorporated in 2013 in New York.
7. Our residence is in Hudson, also in Columbia County.
8. I, too, own various personal firearms. And I have, since 2004, had an unrestricted concealed carry permit issued by Columbia County. The list of handguns is current.¹
9. Prior to September 1, 2022, Columbia County required a pistol permit safety course to apply for a concealed carry permit. I took such a course as part of my application process.
10. By way of introduction, it’s worth mentioning that I am a relatively late-comer to firearms. I have always enjoyed building “stuff,” like houses and cars, and guns is an extension of

¹ Attorney of Record note: I am not providing the detail level in these public documents as is available from the Co-Plaintiffs in the interest of their personal safety.

that – though, initially, quite reluctantly. I’m 46 years old now. It wasn’t until about ten years ago that I went out shooting with a co-worker. I’ll never forget. It was a Remington Rand 1911, a little older. He showed me how to use it. And in that moment, I realized how ignorant I had been until that point. It’s a firearm I have in one of my display cases to this day.

11. My background was as a CNC machinist. I am skilled with CAD (computer-aided design and drafting software) and do computer programming. As a kid, I used to design concept firearms and make models out of them. My grandfather enjoyed taking British Lee Enfields and sporterized them for Sears and Roebuck to sell, among other things. So, when people say something’s “in your blood,” I guess there’s some truth to that.
12. Zero Tolerance Manufacturing is the only brick-and-mortar shop in Columbia County.
13. 99.9% are good people. I meet a lot of nice people. And these are the people I decided I wanted to be able to provide customized firearms. That path led me to the SOT-Type 2 license so that I could learn how to make the most complex types of firearms and accessories. I enjoy the process of moving from concept through design into a one-off custom design.
 - a) An “SOT” license is a “Special Occupational Tax” that is paid under the national Firearms Act to the ATF. Every year, I have also to complete a new ATF Form 5630.7, “Special Tax Registration and Return – National Firearms Act.”
 - b) The SOT License was the “original” firearms manufacturing, import/export, and dealer license, passed to try to rein in the Tommy Guns of the Chicago gangsters – to put it into a very short, historic context. You sometimes hear the short-hand “NFA Firearms” as a

synonym for the machine gun, but the NFA covers more than just that one firearm. It includes also, for example, silencers.

14. I am also a “Responsible Person”² for our Federal Firearms License, Type-01, Dealer in Firearms, our FFL-07, Manufacturing, and the SOT-Class 2 relative to the NFA firearms and accessories.
15. **Working Relationship with the ATF/FBI.**
16. In February 2020, we went through a successful firearms theft recovery event with the ATF and the FBI. It was followed by a successful inventory reconciliation audit.
17. I have nothing but respect for the ATF and FBI Field Officers and Detectives, the men and women with their feet on the ground. It was a strengthening experience to work with such like-minded people.
18. Over the past ten years, we have developed a working relationship with the ATF. They are very quick to answer our questions.
19. **The Impact of the New Laws, Generally.** I have a print copy of the new laws at the shop. We’ve been going back-and-forth with the local Sheriff’s Department, their permit department, local County Clerk’s Office staff, and also judges. At the County level, there is a real push to try to figure out what any of it means.
20. I decided to get us into this business after the “SAFE Act” passed, and I would say that was our first “exposure” to gun law. In comparison to the “SAFE Act,” this pile of

² “Responsible Person” is defined by BATFE on Form 7, “Definitions,” as “In addition to a Sole Proprietor, a Responsible Person is, in the case of a Corporation, Partnership, or Association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management, policies, and practices of the Corporation, Partnership, or Association, insofar as they pertain to firearms.”

mandates was rushed for a political agenda and it shows. Several provisions directly conflict with federal law. Multiple sections required written materials from the Defendants that have yet to appear and we're now two months into it. Some provisions are too ambiguous to have clear meaning, even though they have criminal consequences.

21. The new laws are considerably worse than the "SAFE Act." This has gone beyond the effect of the "SAFE Act" targeting one firearm configuration dubbed by Governor Cuomo as an "assault weapon." The Defendants are targeting a class of people, namely, anyone who has an interest in exercising their Second Amendment rights.

Impending December 5, 2022 Impact:

Federal Pre-Emption and Fifth Amendment Necessitated TRO

22. I cannot, in accordance with federal law, send any of my federal firearms compliance records to the NYS Police, nor can I open my books to the Defendants, other of the Defendants' agencies, or third-parties even if it is a manufacturer of a firearm in my inventory and in my A&D Book.
23. Zero Tolerance federal firearms law records are created for very specific purposes. They belong to Zero Tolerance Manufacturing. The records determine our ability to maintain our federal licenses.³ We are not in business to be sloppy around the edges. We are compliance-minded and work hard to meet our federal firearms licensee obligations. Our federal license renewals are due for submission in February 2023. We are facing immediate decisions on whether we will be able to proceed.

³ 18 U.S.C. §926, 28 CFR §25.6(a), 28 CFR §25.11(b).

24. The Court must strike down the new state records requirements and authorities, as quickly as possible, preferably on or before December 5, 2022.

Immediate Business Impact:

(1.) Defendants Failures Translating into Permit Log-Jam

25. Basically, the Defendants catapulted New York from no (zero) training requirements to 16 classroom + 2 hours of live-fire training requirements, didn't publish the curriculum, didn't produce a test, didn't indicate whether they intend to administer the test, and basically tossed the one-hundred-year evolution of county-level licensing systems into disarray. No respect for the individual's rights. No respect for the Counties doing the daily paperwork to implement and oversee the permitting process. No funding for the Counties. Just a bunch of statute provisions on the books for the Defendants to make headlines and tour the State and threaten law-abiding gun owners with "zero tolerance."
26. The Defendant NYS Police/DCJS memo⁴ (dated August 23, 2022) is not a "curriculum" as this word is generally used in an educational sense. I teach. I enjoy teaching. The NYSP/DCJS memo is a "memo," not course materials.
27. Neither Nadine nor I are able to teach a firearms training course as of September 1, 2022 because the Defendants have not fulfilled their obligations under their own laws. Our classes were on the approved instructor lists for Columbia, Greene, Rensselaer, and Albany Counties.

⁴ NYS Division of Criminal Justice Services/State Police, "Minimum Standards for New York State Concealed Carry Firearm Safety Training" (Issued August 23, 2022) at <https://troopers.ny.gov/system/files/documents/2022/08/final-nysp-dcjs-minimum-standards-for-firearm-safety-training-8-23-22.pdf>. A copy is attached as an Exhibit to this Motion.

28. I taught our last handgun course the end of August. I have been teaching the NRA pistol training course for seven years. I love teaching it. The NRA pistol training course is eight (8) hours, taught in two parts. It comes with a spiral bound book for students, developed and professionally-produced by the NRA.
29. There's also a basic (overview) firearms safety course by the NRA that's four (4) hours long. This, too, has a proper, printed handbook for the students. This is the course that Columbia County required prior to the new laws. That course is the perfect length. You can cover a lot of material in four, well-designed hours. Nadine also taught this class.
30. In order to become NRA instructors, we each had to take sixteen (16) hours of training – *to become an instructor*. The course was taught over two days. By the second day, it was harder to retain information. Adults are not used to being students. We're used to working and doing. The four-hour block, for adults, is the perfect length of time, not only for solid content, but also for attention and retention. It's probably why national organizations like the NRA use the four-hour module and why so many Counties adopted it as a reasonable benchmark.
31. That's not the case now. From one county to the next, even before September 1, 2022, the permitting requirements varied. It is called a "NYS" permit, but it's truly a "County" permit. The process at the County level has been stable over the years.
32. However, "testing" is not as simple as it sounds. SATs. LSATs. Even professional, standardized tests require someone to design those tests to try to avoid bias, testing condition interference, errors in a single question, regular development of fresh questions to avoid cheating, weighted versus straight scoring, etc.

33. There is no history of a test being administered prior to obtaining a concealed carry permit. It echoes to cases that outlawed tests prior to being permitted to vote, including those that gave the registrar the discretion to accept or reject the test response.⁵

34. As to the live-fire component, if it survives judicial scrutiny, why not use dry fire systems or a laser range system like the “Laser Academy Dry Fire Laser Training System” by MantisX? Or go through the NRA “Marksmanship Qualification Program” as another option. I’m unclear otherwise how to offer live-fire training, unless it is in conjunction with law enforcement training facilities and instructors.

35. You can see the results of the new laws directly impacting county permitting schemes by going no further than the Columbia County Sheriff’s Office “Pistol License” page. It now starts with a red color font, legal disclaimer:

“PISTOL PERMIT UPDATE: The information and documents required for the New York State Pistol Permit Application are subject to change and may be subject to further administrative, legislative, and judicial review prior to the completion of application processing. The Columbia County Sheriff’s Office cannot guarantee that New York State’s application and required supporting documentation will not change prior to the completion of application processing. The Sheriff’s Office will provide more information when it becomes available.”⁶

36. It appears that Columbia County is continuing to accept “...the NRA Basic Pistol Safety Course given by a certified instructor on the list of instructors included in your application

⁵ See, e.g., *Schnell v. Davis*, 336 U.S. 933 (1949).

⁶ Official website of the Columbia County Sheriff’s Office, “Pistol License Application Information” page, viewed November 6, 2022 at <https://www.columbiacountysheriff.us/pistol-license.html>. Attached to this Motion as an Exhibit.

packet.”⁷ I am not willing to offer the course; it is insufficient based upon the plain letter of the new laws.

37. I raise these points not to be critical of Columbia County personnel or the other surrounding Counties, each of which appears to be making their own path. I raise this because it is a direct result of the Defendants’ new laws and their failure to meet their own legal commitments under the laws. It makes it impossible to obtain a permit, to teach, to offer to sell handguns for fundamental self-defense, to recertify, and, ultimately, to be ready to defend one’s self and one’s family in a worst-case scenario.
38. It’s neither my job nor the County’s job to try to create work-arounds for such badly conceived and executed laws with no historical basis. These provisions must be struck down.
39. I have a concealed carry permit that I want to timely renew, which will require a valid training course.

Immediate Business Impact:

(2.) Confusion Over Semi-Automatic Rifle Licensing

40. As to the SAR license, I am not aware of any person having applied for or having received a stand-alone semi-automatic license as of the date of signing this “Declaration.” I am of the understanding that Columbia County is starting to add an SAR endorsement to current pistol permits.
41. I have not purchased a new SAR since September 1, 2022.

⁷ *Id.*

42. Our sales numbers were down several thousand dollars in the first week the new laws went into effect and it hasn't recovered in the intervening weeks.
43. Much of what Nadine and I cover in our "Declarations" is a top line of the malfunctions hitting at the County level and its impact upon our personal rights, our customers' rights, and the Second Amendment. And, when we talk about the Second Amendment, there tends to be this emphasis on the core right of self-defense.
44. We're the interface of compliance laws and the public. And, it's more than "just" self-defense. There's an entire level of day-to-day life that we help people solve to keep individuals, businesses, and the economy moving.
45. We offer custom built SARs. That phrase "custom built" doesn't only mean high-end. It also means modifications for persons with physical disabilities and/or physical injuries.
 - a) One customer for whom I did custom work has cerebral palsy. He required modifications to a handgun and a shotgun to compensate for his very limited use of his (dominant) right arm. I modified the Glock 19 so that he could pull the slide back with the edge of his right hand. The modification allowed him to achieve excellent one-handed shooting with his good left hand. To his shotgun, I added a hand stop and sling to the forend so that he could pump and stabilize it with his right arm. It allowed him to shoot proficiently.
 - b) Another customer, who is a Veteran and who was injured in Afghanistan and is now bound to a wheelchair for the rest of his life. He achieved his pistol permit, and we together designed the modifications to his wheelchair for a concealed holster system for his handgun.

- c) Another wheelchair-bound customer wanted a rest system mounted to his chair so that he could shoot his rifle off of it. The modification was successful.
46. We also fulfill a supportive role for law enforcement as a repository for firearms as an alternative for state and local police to help folks get back or transfer their firearms when they are arrested for various reasons.
- a) Law enforcement agencies do run out of room for storage.
 - b) We either restore the firearms to the owner, if permitted by court order at the conclusion of the proceeding, or, we can assist with transfers to third parties, if allowed by court and law. We can also buy them from the owner.
 - c) Every option adheres to the same federal firearms compliance rules as Nadine and I have outlined.
47. Firearms, believe it or not, do actually wear out, especially if not properly maintained. They can be defective. A person may not like or use a particular brand or model, having purchase it with a different expectation in mind. This person, if they only one semi-automatic rifle, is now without, while Counties try to operate in the face of the new laws and the Defendants' failures to do their jobs.
48. Other practical reasons an interruption in the ability of the individual or business to access semi-automatic rifles includes nuisance permits for farms and regional airports. The "nuisance permit" is issued year-round or in greatly expanded periods of the year by the NYS Department of Environmental Conservation for particular "nuisance wildlife" and

“damaging wildlife,” such as deer being trapped inside regional airport fencing or coyote or bear that is attacking or killing farm livestock.⁸

49. Rod and gun club activities, such as the gun raffles in which we’re involved help raise funds for youth scholarships. For example, the Columbia County Sportsmen’s Federation awards scholarships to youth interested in conservation, outdoor wildlife, and journalism.
50. Another example not often considered is the federal tax on guns and ammunition sales that support wildlife agencies in their conservation efforts, hunter education programs, and the operation of shooting and archery ranges. It’s a 10% excise tax paid by manufacturers and importers for handguns and 11% for long guns and ammunition, as against the wholesale price. Year 2021 revenue topped \$1.2 billion.⁹
51. Then there’s the sales tax impact, where our decreased sales impact County-level sales tax revenue that is used in funding everything from Medicare and Medicaid to nursing homes.
52. After the past two years of COVID, restrictions, closures, and supply-chain problems, we all need to get back to an ability to function. Hitting people throughout our State with these new laws, foreseeably destined to crash every County’s licensing systems, could not have been more ill-timed or advised.

⁸ See, NYS DEC website “Remove or “Take” Nuisance Animals Legally” at <https://www.dec.ny.gov/animals/81531.html>. A copy is attached as an Exhibit to this Motion.

⁹ Congressional Research Service, “Firearms and Ammunition Excise Tax (FAET)” (July 22, 2022), Report IF12173 at <https://crsreports.congress.gov/product/details?prodcode=IF12173>.

Constitutional-Regulatory Overburden as of December 5, 2022:

(3.) The “Safety Plan” Mandates Cannot Be Carried Out

53. We ship, including out-of-state, to recipient FFLs, and we do so in accordance with federal law. Our relationship with the US Postal Service and our shippers is as important as our relationship with the ATF.
54. Super simple: under federal law, the responsibility for the firearm is on me until it is received at the intended FFL destination and it is accepted. What we’re doing in that process is taking a firearm from the Zero Tolerance inventory that is line listed in the A&D Book and transferring it to the recipient FFL to go into his A&D Book as a new entry into his inventory.¹⁰
55. If the firearm is lost or stolen in transit, Nadine or I are the FFL to fill in ATF Form 3310.11.11 We are the FFLs with personal knowledge of the firearm. We are the FFL which recorded the data about the firearm into the A&D Book. And we are the only FFL with the information needed to fill out the form, largely because we have the serial numbers and manufacturer’s information and we are vouching that we’ve properly recorded that information prior to shipping.
56. The loss or theft in transit must be reported to the ATF by the FFL within 48-hours.¹²
57. You literally can’t flip shipping responsibilities and maintain the federal firearms compliance system used nationwide. There is no reason for the Defendants to be involved from a legislative or a regulatory perspective.

¹⁰ 27 CFR §§478.122, 478.123, and 478.125.

¹¹ See, 18 U.S.C. §923(g)(6) and 27 CFR §478.39(a).

¹² Again, reference to 18 U.S.C. §923(g)(6) and 27 CFR §478.39(a).

58. I can think of no reason to change the well-constructed and ingrained-among-FFL system for shipments of firearms.

Constitutional-Regulatory Overburden as of December 5, 2022:
(2.) The “Safety Plan” Mandates Cannot Be Carried Out

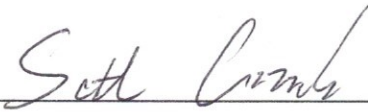
59. I say all of this, and there’s still a long list of additional provisions, all of which I oppose and request be stopped.
60. My parents own the commercial property in which we operate Zero Tolerance Manufacturing. This has allowed us the opportunity to customize our space in ways that might not be possible in other retail outlets.
61. We have a high value inventory. I create custom-built firearms. And I am in the R&D phase of manufacture of Class 3 NFA suppressors.
62. We take the security of our premises very serious. There are bars, alarms, and cameras.
63. Not even a local bank could maintain a vault as large as what would be required and it would collapse our building.
64. We recently installed state-of-the-art cameras. The specifications of all of the “security” components in the new law are unclear, largely because the Defendants have failed to meet their responsibilities under their new laws. But, working with what’s in the new laws and making a “best guess,” it would be impossible logistically or financially to comply with the new mandates. The cost work-through done by Nadine is not within the financial capability of our small business, especially with our customer base being so disrupted, already, over laws already in effect.

65. It's a very uncomfortable position to be in as an FFL: a conversation of "best guess." We don't struggle with this problem in relation to federal firearms compliance. We've certainly had a list of New York laws, predating the new ones, with which we disagree and take note of, but find a way to work with. The new laws are far too much, too quickly, and without any support from the Defendants, whether in their failures to complete their delegated assignments or the poor quality of the laws or the disregard for federal law and court decisions.
66. The Defendants left us with no choice but to seek judicial relief. The back-end of their new laws is criminal charges.

The Out-of-Business Scenario

67. Not long after the "SAFE Act" was signed, Nadine and I decided to undertake the hardest thing in the hardest state to do it: selling firearms in New York. Opening our shop was the best leap of faith I could have done for me and my family, and the people we've met along these ten years is my favorite part of running it. When Defendant Gov. Hochul called the Legislature back in under the guise of an "emergency" because of the NYSRPA v. Bruen Decision, I felt hopeless. Then, a man walked into Zero Tolerance with news a lawsuit was being put together for gun store owners and gun shows. Exactly like the moment of starting Zero Tolerance, we knew it was time to step up and defend our constitutional rights as individuals, as FFLs, and as business owners.
68. I respectfully request this Court to halt the laws complained of and to grant such other immediate relief as is requested in this Motion.

Dated: November 8, 2022



Seth Gazzola, individually

and as the Owner of "Zero Tolerance Manufacturing, Inc.,"

an FFL-01 Dealer in Firearms,

an FFL-07 Manufacturer of Firearms,

and an FFL/SOT-2 Class 3 Manufacturer